

(The documents referred to follow:)

[H.R. 11341, 86th Cong., 2d sess.]

A BILL To promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

AMENDMENTS TO SECTION 309

Section 1. (a) The section heading and subsections (a) and (b) of section 309 of the Communications Act of 1934 (47 U.S.C. 309) are amended to read as follows:

"ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES; 'PAYOFFS' AND 'SWAP-OFFS' BETWEEN APPLICANTS

"SEC. 309. (a) Before the Commission grants to an applicant—

"(1) a broadcast station license,

"(2) a permit for construction of a broadcast station, or

"(3) authority for modification of a broadcast station license or of a permit for construction of a broadcast station in any case in which, because of the substantial nature of the proposed modification, the Commission is of the opinion that the application should be designated for hearing, the Commission shall hold a public hearing in the area which is to be served by the broadcast station to be constructed or operated under the permit or license applied for, or constructed or operated under the permit or license with respect to which such authority for modification is applied for. The permit, license, or authority applied for may be granted only if the applicant establishes affirmatively at such hearing that the public interest, convenience, and necessity will be served by the granting to him of such license, permit, or authority. The Commission shall give notice of such hearing in newspapers of general circulation, and over broadcasting stations, in such area at least ten days before such hearing. This subsection shall not apply to any application for renewal of a broadcast station license or for renewal of a permit for construction of a broadcast station.

"(b) (1) If upon examination of any application provided for in section 308 (except any application to which subsection (a) of this section applies) the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(2) If upon examination of any such application the Commission is unable to make the finding specified in paragraph (1) of this subsection, it shall forthwith notify the applicant and other known parties in interest of the grounds and reasons for its ability to make such finding. Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all objections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply.

"(3) If the Commission, after considering such reply, shall be unable to make the finding specified in paragraph (1) of this subsection, it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally. Any party in interest who is not notified by the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis for his interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant."

(b) The first sentence of subsection (c) of such section 309 is amended by striking out "in subsection (a) hereof" and inserting in lieu thereof "in paragraph (1) of subsection (b) of this section".

(c) Such section 309 is further amended by redesignating subsection (d) of such section as subsection (f), and by inserting immediately after subsection (c) of such section the following new subsections:

"(d) (1) Before the earliest date on which an order of the Commission granting a broadcasting station license or a permit for construction of a broadcasting station is no longer subject to rehearing by the Commission or review by any court, no applicant for such license or permit, as the case may be, shall directly or indirectly pay or promise to pay to any other applicant for the same license or permit any money or other thing of value as consideration for such other applicant's withdrawal as such an applicant, unless the applicant proposing to make such payment and the applicant to whom it is proposed to be made both first file with the Commission a petition for Commission approval of such proposed payment and the Commission thereafter approves such proposed payment. The Commission shall approve any proposed payment to an applicant, pursuant to a petition filed under this paragraph if, but only if, the amount or value of the payment is not in excess of the aggregate amount determined by the Commission to have been legitimately and prudently expended and to be expended by such applicant in connection with preparing, filing, and advocating the granting of the application for the license or permit sought by him.

"(2) If the Commission approves any proposed payment to an applicant pursuant to a petition filed under paragraph (1) of this subsection, it shall give public notice of such approval, and (unless an order of the Commission has been issued granting such license or permit, as the case may be, to an applicant other than the applicant proposing to make such approved payment) the Commission (A) shall set aside any order granting such license or permit which was issued before the date on which such notice is given and permit the person to whom such grant was made to file a new application, and (B) during the period of 30 days after the date on which such notice is given, shall accept applications which may be filed by other persons for such broadcast station license or permit for construction of a broadcast station, as the case may be.

"(e) (1) It is the sense of Congress that 'swap-offs' in the case of broadcast station licenses and permits for construction of broadcast stations are contrary to the public interest, convenience, and necessity. As used in this subsection the term 'swap-off' means any arrangement whereby an applicant for a broadcast station license or a permit for the construction of a broadcast station, in return for the withdrawal of any other applicant for such license or permit, agrees not to file an application for, or to withdraw as an applicant for, any other broadcast station license or permit for construction of a broadcast station.

"(2) In acting on applications for broadcast station licenses and permits for construction of broadcast stations and on applications for approval of transfers of such licenses and permits the Commission shall take into account the policy declared in paragraph (1) of this subsection. In order to give effect to the policy declared in paragraph (1) of this subsection the Commission shall prescribe regulations requiring applicants to file with the Commission, at such times and in such manner and form as the Commission shall require, such information as the Commission shall deem to be necessary for such purpose."

#### AMENDMENTS TO SECTION 312

SEC. 2. Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by (1) redesignating subsections (d) and (e) of such section as subsections (e) and (f), respectively, and (2) striking out subsections (a), (b), and (c) of such section, and inserting in lieu thereof the following:

"(a) The Commission may revoke any station license or construction permit—

"(1) for false statements knowingly made either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application;

"(3) for willful or repeated failure to operate substantially as set forth in the license;

"(4) for willful or repeated violation of, or willful or repeated failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

"(5) for violation of or failure to observe any cease and desist order issued by the Commission under this section; or

"(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code.

"(b) Where any person (1) has failed to operate substantially as set forth in a license or (2) has violated or failed to observe any of the provisions of this Act or (3) has violated or failed to observe any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States the Commission may order such person to cease and desist from such action.

"(c) The Commission may suspend a station license for a period of not more than ten consecutive days—

"(1) for false statements made either in the application or in any statement of fact which may be required pursuant to section 308;

"(2) because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license on an original application;

"(3) for failure to operate substantially as set forth in the license;

"(4) for violation of or failure to observe any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States;

"(5) for violation of or failure to observe any cease and desist order issued by the Commission under this section; or

"(6) for violation of section 1304, 1343, or 1464 of title 18 of the United States Code.

"(d) Before revoking a license or permit pursuant to subsection (a), issuing a cease and desist order pursuant to subsection (b), or suspending a license pursuant to subsection (c), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or suspension or a cease and desist order, as the case may be, should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon the licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is invoked, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or suspension or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person."

#### AMENDMENT OF SECTION 317

SEC. 3. Section 317 of the Communications Act of 1934 (47 U.S.C. 317) is amended to read as follows:

#### "ANNOUNCEMENT THAT MATTER IS PAID FOR

"SEC. 317. (a) For the purposes of this section, the term 'payment' means any payment made or to be made in money or property, in services, or in any other manner or form constituting a valuable consideration.

"(b) With respect to any matter broadcast by a radio station, for the broadcasting of which matter any direct or indirect payment has been or is made or promised to, or charged or accepted by, any person, it shall be the duty of the person in control of such broadcasting to broadcast in connection therewith an announcement that such matter was paid for or furnished, as the case may be, and such announcement shall name the person who made, promised, or furnished such payment; except that—

"(1) this subsection shall not require the person in control of the broadcasting to make such an announcement with respect to any payment of which neither such person nor any officer or employee of such person had knowledge at the time the matter in question was broadcast, if such lack of knowledge was not due to the failure of such person to use reasonable diligence in seeking the information needed for the purposes of this subsection, and

"(2) if the person in control of the broadcasting makes an announcement, in purported compliance with this subsection, and such announcement is

based on and is in conformity with, and is made in good faith in reliance upon, information furnished to such person by another person as required by subsection (c) of this section, the person in control of such broadcasting shall not be held to have violated this subsection by reason of the fact that the announcement so made is false or inadequate if he establishes a guaranty relating to the payment in question, signed by and containing the name and address of such other person, which meets the requirements specified with respect to guaranties in subsection (c) of this section.

"(c) Whenever any person makes or promises to make any direct or indirect payment for the broadcasting of any matter broadcast by a radio station, it shall be the duty of the person who makes or promises to make such payment—

"(1) to inform the person who, under such subsection (b), is required to make such announcement of the name and address of the person making or promising to make the payment, the name and address of the person to whom the payment has been or is to be made, and the nature of the payment and the amount or value thereof, and

"(2) if requested to do so by the person who is required by subsection (b) to make such announcement, to furnish to such person a guaranty (in such form as shall be prescribed by the Commission) that the information given pursuant to paragraph (1) of this subsection is a full and true statement of the information required to be supplied thereunder."

#### NEW SECTION 508

SEC. 4. Title V of the Communications Act of 1934 (47 U.S.C. subchapter V) is amended by adding at the end thereof the following section:

#### "PROHIBITED PRACTICES IN CASE OF QUIZ PROGRAMS AND OTHER PROGRAMS PRESENTING CONTESTS OF KNOWLEDGE OR SKILL

"SEC. 508. (a) It shall be unlawful for any person, with intent to deceive the listening or viewing public—

"(1) To supply to any participant in a purportedly bona fide contest of knowledge or skill any special and secret assistance whereby the outcome of such contest will be in whole or in part prearranged or predetermined.

"(2) By means of persuasion, bribery, intimidation, or otherwise, to induce or cause any participant in a purportedly bona fide contest of knowledge or skill to refrain in any manner from using or displaying his knowledge or skill in such contest, whereby the outcome thereof will be in whole or in part prearranged or predetermined.

"(3) To produce or participate in the production for broadcasting of, to broadcast or participate in the broadcasting of, to offer to a licensee for broadcasting, or to sponsor, any radio program, knowing or having reasonable ground for believing that, in connection with a purportedly bona fide contest of knowledge or skill constituting any part of such program, any person has done or is going to do any act or thing referred to in paragraph (1) or (2) of this section.

"(4) To conspire with any other person or persons to do any act or thing prohibited by paragraph (1), (2), or (3), if one or more of such persons do any act to effect the object of such conspiracy.

"(b) For the purposes of this section —

"(1) The term 'contest of knowledge or skill' means any such contest (A) which constitutes the whole or any part of a program broadcast from a radio station, and (B) in connection with which any money or any other thing of value is offered as a prize or prizes to be paid or presented by the program sponsor or by any other person or persons, as announced in the course of the broadcast, on the basis of the performance or performances of the successful participant or participants in the contest.

"(2) The term 'the listening or viewing public' means those members of the public who, with the aid of radio receiving sets, listen to and view programs broadcast by radio stations.

"(c) Whoever violates subsection (a) shall be fined not more than \$10,000 or imprisoned not more than two years, or both."

#### EFFECTIVE DATE

SEC. 5. The amendments made by this Act shall take effect 120 days after the date of its enactment.

[H.R. 10241, 86th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934 by adding thereto a new section to prohibit the broadcasting of material intended to deceive the listening or viewing public

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That part I of title III of the Communications Act of 1934 (47 U.S.C. 301-329) is amended by adding at the end thereof the following new section:

"BROADCASTING OF MATTER INTENDED TO DECEIVE THE LISTENING OR VIEWING PUBLIC

"SEC. 330. (a) It shall be unlawful—

"(1) for any person to use, or to cause or assist any person to use, the facilities of any station for the broadcasting of any program, or part thereof, with intent to receive the listening or viewing public.

"(2) for any person to prepare, or to cause or assist any person to prepare, any material for use in any broadcasting program, or any part thereof, with intent to deceive the viewing or listening public;

"(3) for two or more persons to conspire to do any act or thing prohibited by subparagraph (1) or (2), if one or more of such persons does any act to effect the object of such conspiracy.

"(b) Whoever violates subsection (a) of this section shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

"(c) For the purposes of this section—

"(1) Advertising matter which is broadcast in connection with a program, and which is intended or calculated to promote the sale of articles or services, shall be held to be part of such program.

"(2) The term 'matter' includes all writing, signs, signals, pictures, and sounds of all kinds, or any combination thereof, disseminated or communicated by means of radio communication."

[H.R. 10242, 86th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcasting licensees operate in accordance with the public interest

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 307 of the Communications Act of 1934, as amended (47 U.S.C. 307), is amended by striking out subsections (d) and (e) and inserting in lieu thereof the following subsections:

"(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked or suspended as hereinafter provided.

"(e) Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby. In the alternative, in the case of broadcasting licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby, a conditional renewal for a term not to exceed one year may be granted upon such terms and conditions as the Commission, in its discretion, shall deem appropriate. Upon the expiration of the conditional license, upon application therefor, a renewal of the original license may be granted for a term not to exceed three years, if the Commission finds that the licensee has met the terms and conditions imposed in the conditional renewal and that public interest, convenience, and necessity would be served thereby.

"(f) In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearings and final decision

on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.

"(g) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license."

SEC. 2. Section 312 of such Act (47 U.S.C. 312) is amended as follows:

(1) Subsection (a) is amended by inserting at the end thereof the following sentence: "For any act or omission described in paragraph (3), (4), or (5) of this subsection, the Commission, in lieu of revocation, may from time to time suspend any station license for a term not to exceed thirty consecutive days."

(2) Subsection (c) is amended to read as follows:

"(c) Before revoking or suspending a license or permit pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Commission shall serve upon the licensee, permittee, or person involved an order to show cause why an order of revocation or suspension or a cease and desist order, as the case may be, should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said licensee, permittee, or person to appear before the Commission at a time and place stated in the order, but in no event less than thirty days after the receipt of such order, and give evidence upon the matter specified therein; except that where safety of life or property is involved, the Commission may provide in the order for a shorter period. If after hearing, or a waiver thereof, the Commission determines that an order of revocation or suspension or a cease and desist order should issue, it shall issue such order, which shall include a statement of the findings of the Commission and the grounds and reasons therefor and specify the effective date of the order, and shall cause the same to be served on said licensee, permittee, or person."

(3) Subsection (e) is amended to read as follows:

"(e) The provisions of section 9(b) of the Administrative Procedure Act which apply with respect to the institution of any proceeding for the revocation of a license or permit shall apply also with respect to the institution, under this section, of any proceeding for the suspension of a license or the issuance of a cease and desist order."

[H.R. 11397, 86th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934 by adding thereto a new section to prohibit commercial bribery for the purpose of inducing the broadcast performance of musical works

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That title V of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

**"INDUCEMENTS FOR BROADCAST PERFORMANCE OF MUSICAL WORKS"**

"SEC. 508. (a) It shall be unlawful:

"(1) For any station licensee to accept payment in services, money or any other valuable consideration as an inducement for performing or selecting the performance of any particular musical work or recording thereof in which the party making such payment (or for whom the payment is made) has a pecuniary interest.

"(2) For any person directly or indirectly to pay or promise to pay services, money or any other valuable consideration to any station licensee as an inducement for performing or selecting the performance of any musical work or recording thereof in which the person making such payment (or for whom such payment is made) has a pecuniary interest.

"(3) For any employee of a radio or television broadcast station or any other person to accept payment in services, money, or any other valuable consideration from any person other than his employer in consideration of selecting a particular musical work or recording thereof for broadcast.

"(4) For any person directly or indirectly to pay or promise to pay services, money or any other valuable consideration to any employee or a radio or television broadcast station as an inducement for performing or selecting the performance of any musical work or recording thereof.

"(b) Whoever violates any provision of subsection (a) (1), (2), (3), or (4) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than \$1,000, or both.

"(c) Nothing contained herein shall be construed to prohibit a party with a pecuniary interest in a musical work or recording thereof from making a bona fide purchase of time on a station in order to sponsor such musical work or recording thereof."

[H.R. 11398, 86th Cong., 2d sess.]

A BILL To amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcast licensees, filing renewal applications, continue to operate in accordance with the public interest

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 307 of the Communications Act of 1934, as amended (47 U.S.C. 307), is amended by striking out subsections (d) and (e) and inserting in lieu thereof the following subsections:

"(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked or suspended as hereinafter provided.

"(e) Upon the expiration of any license, upon application thereof, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, and not to exceed five years in the case of other licenses, if the Commission finds that public interest, convenience, and necessity would be served thereby.

"(f) If the Commission finds that public interest, convenience, and necessity would be served thereby, a conditional renewal of broadcasting licenses for a term not to exceed one year may be granted upon such terms and conditions as the Commission, in its discretion, shall deem appropriate. Upon the expiration of the conditional license, upon application therefor, a renewal of the original license may be granted for a term not to exceed three years, if the Commission finds that the licensee has met the terms and conditions imposed in the conditional renewal and that public interest, convenience, and necessity would be served thereby.

"(g) In making its findings and decision on applications for renewal of broadcasting station licenses, the Commission shall consider among other things:

"(1) Whether the applicant has violated any of the provisions of title V, section 508, subsection (a) (1) of this Act.

"(2) Whether the applicant has ratified or consented to conduct by any of its officers or employees in violation of title V, section 508, subsection (a) (3) of this Act; provided, also, that such consent shall be presumed from recurrent violations of section 508, subsection (a) (3) over a period of at least six months found by the Commission to constitute a pattern or practice.

"(h) In order to expedite action on applications for renewal of broadcasting station licenses and in order to avoid needless expense to applicants for such renewals, the Commission shall not require any such applicant to file any information which previously has been furnished to the Commission or which is not directly material to the considerations that affect the granting or denial of such application, but the Commission may require any new or additional facts it deems necessary to make its findings. Pending any hearings and final decision on such an application and the disposition of any petition for rehearing pursuant to section 405, the Commission shall continue such license in effect.

"(i) No renewal of an existing station license shall be granted more than thirty days prior to the expiration of the original license."

[S. 1898, 86th Cong., 1st sess.]

AN ACT To amend the Communications Act of 1934 with respect to the procedure in obtaining a license and for rehearings under such Act

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended to read as follows:

"ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES

"SEC. 309. (a) (1) No application provided for in sections 308, 310(b), and 325(b) for an instrument of authorization or any station in the broadcasting or common carrier services or for any station within the scope of subsection (e)

shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof: *Provided*, That this requirement shall not apply to any minor amendment of any such application or to any application for (A) minor change in the facilities of an authorized station, (B) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control, (C) license under section 319(c) or, pending application for or grant of such license any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license, (D) extension of time to complete construction or authorized facilities, (E) authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station, or (F) authorizations pursuant to section 325(b) where the programs to be transmitted are special events not of a continuing nature, or (G) special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation or (H) authorization under any of the proviso clauses of section 308(a).

"(2) Any party in interest may file a petition to deny any application or amendment thereof to which the requirement of paragraph (1) of this subsection applies at any time prior to the day of Commission grant thereof without hearing or formal designation thereof for hearing: *Provided*, That, with respect to any classification of applications, the Commission from time to time by rule may specify a shorter period (no less than thirty days following the issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof), which shorter period shall be reasonably related to the time when the applications would normally be reached for processing. Such petition shall be served on the applicant and shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant thereof would be *prima facie* inconsistent with subsection (b). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit. If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (b), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition which shall dispose of each substantial question presented thereby. If a substantial and material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with subsection (b), it shall proceed as provided in subsection (c).

"(b) Whether or not a petition to deny is filed under subsection (a), the Commission shall examine each application provided for in section 308. If upon examination of any such application provided for in section 308 and upon consideration of any such petition and any reply thereto or such other matters as the Commission may officially notice the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(c) If upon examination of any such application, petition to deny or reply thereto or such other matters as the Commission may officially notice the Commission is unable to make the finding specified in subsection (b), it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue but not including issues or requirements phrased generally: *Provided*, That, if the Commission finds that by first giving the applicant and other known parties in interest notice of all objections to such application and an opportunity to reply thereto a determination of the application may be expedited, it shall forthwith give such notice and opportunity for reply before formally designating the application for hearing. The parties in interest, if any, who are not notified by the Commission of its action with respect to a particular application, may acquire the status of a party to the



proceeding thereon by filing a petition for intervention showing the basis for their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

"(d) When an application subject to subsection (a) has been filed, the Commission, notwithstanding the requirements thereof, may, if otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding ninety days, and upon making like findings may extend such temporary authorization for one additional period not to exceed ninety days. When any such grant is made, the Commission shall give expeditious treatment to any timely filed petition to deny such application and to any petition for rehearing of such grant filed under section 405.

"(e) The stations other than in the broadcasting or common carrier service referred to in subsection (a) are (1) fixed point-to-point microwave stations, but not including control and relay stations used as integral parts of mobile radio systems, (2) industrial radio positioning stations for which frequencies are assigned on an exclusive basis, (3) aeronautical en route stations, (4) aeronautical advisory stations, (5) airdrome control stations, (6) aeronautical fixed stations, and (7) such other stations or classes of stations as the Commission by rule provides.

"(f) The Commission is authorized to adopt by rule reasonable classifications of applications and amendments in order to effectuate the purposes of this section.

"(g) Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such license shall be subject: (1) The station license shall not vest in the licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; (2) neither the license nor the right granted thereunder shall be assigned or otherwise transferred in violation of this Act; (3) every license issued under this Act shall be subject in terms to the right of use or control conferred by section 606 hereof."

Sec. 2. Section 319(c) of the Communications Act of 1934 (47 U.S.C. 319(c)) is amended by striking out "and (c)" and inserting in lieu thereof "(c), (d), and (e)".

Sec. 3. Section 405 of the Communications Act of 1934 (47 U.S.C. 405) is amended—

(1) by striking out "and party" in the first sentence and inserting in lieu thereof "any party", and

(2) by inserting after the fourth sentence a new sentence as follows: "The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition, in whole or in part, and ordering such further proceedings as may be appropriate: *Provided*, That in any case where such petition relates to an instrument of authorization granted without a hearing, the Commission shall take such action within ninety days of the filing of such petition."

Passed the Senate August 19 (legislative day, August 18), 1959.

Attest:

FELTON M. JOHNSTON,  
*Secretary.*

[H.R. 7017, 86th Cong., 1st sess.]

A BILL To amend the Communications Act of 1934 for the purpose of substituting a "pregnant procedure" for the "protest procedure" now provided for by section 309, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 309 of the Communications Act of 1934, as amended (47 U.S.C. 309), is amended to-read as follows:

"ACTION UPON APPLICATIONS

"SEC. 309. (a) (1) No application provided for in section 308 for an instrument of authorization for any station in the broadcasting or common carrier services, or for any station within the scope of subsection (d), shall be granted by the Commission earlier than thirty days following issuance of public notice by the Commission of the acceptance for filing of such application or of any substantial amendment thereof; except that this requirement shall not apply to any minor amendment of any such application or to any application for (i) minor change in the facilities of an authorized station, (ii) consent to an involuntary assignment or transfer under section 310(b) or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control, (iii) license under section 319(c) or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license, (iv) extension of time to complete construction of authorized facilities, (v) authorization of facilities for remote pickups and studio links for use by the licensee or permittee of a broadcast station in the operation of such station or (vi) authorization under any of the proviso clauses of section 308(a).

"(2) Any party in interest may file a petition to deny any application or amendment thereof to which paragraph (1) of this subsection applies at any time prior to the day of Commission grant thereof without hearing or formal designation thereof for hearing. Such petition shall be served on the applicant and shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant thereof would be prima facie inconsistent with subsection (b). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall be given the opportunity to file a reply in which allegations of fact or denials thereof shall similarly be supported by affidavit. If the Commission, after oral argument if it deems oral argument appropriate, finds that there are no substantial and material questions of fact and that grant of the application would be consistent with subsection (b), it shall make the grant, deny the petition and issue a concise statement of the reasons for denying the petition which shall dispose of each substantial question presented thereby. If a substantial and material question of fact is presented or if the Commission for any other reason is unable to find that grant of the application would be consistent with subsection (b), it shall proceed as provided in subsection (c).

"(b) Whether or not a petition to deny is filed under subsection (a), the Commission shall examine each application provided for in section 308. If upon examination of any such application and upon consideration of any such petition and any reply thereto, the Commission shall find that public interest, convenience, and necessity would be served by the granting thereof, it shall grant such application.

"(c) If upon examination of any such application the Commission is unable to make the finding specified in subsection (b), it shall forthwith notify the applicant and all other known parties in interest of the grounds and reasons for its inability to make such finding other than the grounds and reasons specified in any petition to deny the application filed under subsection (a). Such notice, which shall precede formal designation for a hearing, shall advise the applicant and all other known parties in interest of all such other objections made to the application as well as the source and nature of such objections. Following such notice, the applicant shall be given an opportunity to reply. If the Commission, after considering such reply and any petition to deny the application filed under subsection (a) as well as any reply thereto, shall be unable to make the finding specified in subsection (b), it shall formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the

applicant and all other known parties in interest of such action and the grounds and reasons therefor and shall specify the issues to be heard. Any party in interest who is not notified by the Commission of its action with respect to a particular application may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis for its interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that, with respect to any issue presented by a petition to deny or a petition to enlarge issues and specified by the Commission, both such burdens shall be as determined by the Commission.

"(d) The stations other than in the broadcasting or common carrier service referred to in subsection (a) are (1) fixed point-to-point stations, but not including control and relay stations used as integral parts of mobile radio systems, (2) industrial radiopositioning stations for which frequencies are assigned on an exclusive basis, (3) aeronautical en route stations, (4) aeronautical advisory stations, (5) airdrome control stations, (6) aeronautical fixed stations, and (7) such other stations or classes of stations as the Commission by rule provides.

"(e) The Commission is authorized to adopt by rule reasonable classification of applications and amendments in order to effectuate the purposes of this section."

SEC. 2. Section 405 of such Act (47 U.S.C. 405) is amended to read as follows:

"REHEARINGS BEFORE COMMISSION

"SEC. 405. After a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto, or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing; and it shall be lawful for the Commission, in its discretion, to grant such a rehearing if sufficient reason therefor be made to appear. Petitions for rehearing must be filed within thirty days from the date upon which public notice is given of any decision, order, or requirement complained of. No such application shall excuse any person from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such decision, order, or requirement, except where the party seeking such review (1) was not a party to the proceedings resulting in such decision, order, or requirement, or (2) relies on questions of fact or law upon which the Commission has been afforded no opportunity to pass. The Commission shall enter an order, with a concise statement of the reasons therefor, denying a petition for rehearing or granting such petition in whole or in part and ordering such further proceedings as may be appropriate; and in any case where such petition relates to an instrument of authorization granted without a hearing the Commission shall take such action within ninety days of the filing of such petition. Rehearings shall be governed by such general rules as the Commission may establish, except that no evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission believes should have been taken in the original proceeding shall be taken on rehearing. The time within which a petition for review must be filed in a proceeding to which section 402(a) applies, or within which an appeal must be taken under section 402(b), shall be computed from the date upon which public notice is given of orders disposing of all petitions for rehearing filed in any case, but any decision, order, or requirement made after such rehearing reversing, changing, or modifying the original order shall be subject to the same provisions with respect to rehearing as an original order."

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., April 15, 1960.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 11341) to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

Section 309 of the Communications Act of 1934, as amended (47 U.S.C. 309) authorizes the Federal Communications Commission to grant without a hearing an application for a permit or license if it finds that public interest, convenience, and necessity would be served by the granting thereof. Section 1 of the bill would amend section 309 to require the Commission to hold a public hearing in the area involved before granting a broadcast station license, a construction permit, or modification of a license or permit. Section 1 would also amend section 309 so as to prohibit one applicant for a license or permit to pay another applicant to withdraw the latter's application unless approved by the Commission and only if the proposed payment is limited in amount to legitimate and prudent expenditures in prosecuting the application. Section 1 would further amend section 309 by declaring "swap-off" to be contrary to the public interest, convenience, and necessity, the term "swap-offs" meaning any arrangement whereby an applicant for a license or permit, in return for the withdrawal by any other applicant for such license or permit, agrees not to file an application for, or to withdraw as an applicant for, any other license or permit.

Inasmuch as the proposed amendments of section 309 would primarily affect the operations of the Federal Communications Commission, the Department of Justice defers to the views of the Commission concerning their enactment.

Section 312 of the Act (47 U.S.C. 312) authorizes the Commission to revoke station licenses on certain specified grounds. Section 2 of the bill would amend section 312 to add as a ground for revocation the violation of certain sections of title 18, United States Code; namely, section 1304 (broadcasting of lottery information), section 1343 (broadcasting of schemes to defraud), and section 1464 (broadcasting of obscene language). Section 2 would also amend the section so as to authorize the Commission to suspend (as an alternative to revocation) a station license for a period of not more than 10 consecutive days for (1) false statements in the application or in any statement of fact required pursuant to section 308, (2) conditions which would warrant the Commission in refusing to grant a license on an original application, (3) failure to operate according to the terms of the license, (4) violation of or failure to observe provisions of the act or rules or regulations authorized by the act, (5) violation of cease and desist orders, and (6) violation of sections 1304, 1343, or 1464 of title 18, United States Code, referred to above.

In his report to the President on "Deceptive Practices in Broadcasting Media" (See H. Rept. 1258, 86th Cong., pp. 61-90), the Attorney General indicated that the revocation of licenses, the only express sanction now authorized under the act, was too drastic and that less severe sanctions should be authorized, including temporary suspension of licenses. The length of time during which suspension should be authorized involves a question concerning which the Department defers to the views of the Federal Communications Commission.

Section 3 of the bill would amend section 317 of the act to require announcement by the person in control of a broadcasting station of any payment made or accepted for any matter broadcast, including the name of the person making such payment, but the person in control of the broadcasting would not be required to make such an announcement if neither he nor any officer or employee of such person had knowledge of such payment or lack of such knowledge was not due to failure to use reasonable diligence. The person who makes the announcement would not be held to have violated the section if the announcement so made is false, provided he establishes that he made the announcement in good faith in reliance upon information furnished by the person making the payment. Violations of the section would presumably be subject to criminal penalties under section 501 of the act.

In his aforementioned report, the Attorney General pointed out that present section 317, coupled with the criminal sanctions of section 501, makes "payola" a criminal offense as to a broadcasting station only, and he recommended the enactment of legislation which would also make "payola" on the part of employees of stations a criminal offense (H. Rept. 1258, p. 90).

While the Department would have no objection to the enactment of legislation similar to the proposed new section 317, we think it might be necessary to define the term "person in control" of broadcasting.

Section 4 of the bill would add a new section 508 to the act which would make it unlawful for any person, with intent to deceive the listening or viewing public, (1) to supply secret assistance to a participant in a purportedly bona fide contest of knowledge or skill so as to prearrange or predetermine the outcome of the contest, (2) to induce a participant to refrain from using or displaying his knowledge or skill in such a contest, and (3) to produce or participate in a production for broadcasting, to broadcast, or to offer to a licensee for broadcasting any such program with reasonable ground to believe that the acts described above have been done or are going to be done.

The aforementioned report of the Attorney General surveyed the recent disclosures concerning rigged and deceptive television and radio programs, and concluded that by promulgating additional rules and regulations under their affirmative statutory duty to protect the public interest in broadcasting and advertising the Federal Communications Commission and the Federal Trade Commission could take effective action against such practices. In submitting the report the Attorney General stated that "it seems premature to recommend any substantial legislative changes until the agencies and the industry have had an adequate opportunity to show the effectiveness of present and recommended action in dealing with the problems under existing authority." (H. Rept. 1258, p. 63). If the proposed section 508 should be enacted, however, it is recommended that paragraph (4) of subsection (a), relating to conspiracy to violate the section, be deleted, as it is unnecessary in view of section 371 of title 18, United States Code.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,  
*Deputy Attorney General.*

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., April 18, 1960.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of March 25, 1960, requesting the views of this office with respect to H.R. 11341, to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "payoffs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

While the Bureau of the Budget is in general agreement with the purposes of the legislation, we recommend against the mandatory hearing requirement in section 1 of the bill for the reasons given by the Federal Communications Commission in its testimony of April 12, 1960, and would also like to call to the committee's attention the numerous technical objections to the bill raised by the Federal Communications Commission, the Department of Justice, and the Federal Trade Commission.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

FEDERAL TRADE COMMISSION,  
Washington, April 11, 1960.

Hon. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of March 25, 1960, for comment upon H.R. 11341, 86th Congress, 2d session, a bill to promote the public interest by amending the Communications Act of 1934, to require a public hearing before the original granting of broadcast licenses, to regulate "pay-offs" and "swap-offs" between applicants for such licenses, to grant authority to suspend such licenses, to make more effective the requirement regarding announcements as to broadcast matter which is paid for, to prohibit certain deceptive practices in the case of quiz programs, and for other purposes.

Section 1 of the bill would amend section 309 of the Communications Act of 1934 to modify the procedural steps to be taken by the Federal Communications Commission on applications for construction permits, station licenses, and modifications and renewals of licenses. It would also establish conditions under which one competing applicant for a license or permit may pay compensation to another for withdrawal of the other as an applicant, subject to regulations of the Federal Communications Commission, and would prohibit "swap-offs," i.e., arrangements whereby an applicant for a license or construction permit withdraws his application in return for the withdrawal of another applicant for some other license or permit.

As the proposed amendment of section 309 of the Federal Communications Commission Act pertains to matters within the jurisdictional and administrative authority of the Federal Communications Commission and would have no effect upon the duties or functions of the Federal Trade Commission, we have no comment to offer upon this section of the bill.

Section 2 of the bill would amend section 312 of the Communications Act of 1934 by adding instances of violation of sections 1304, 1343, and 1464 of title 18 of the United States Code to the grounds for which the Federal Communications Commission may revoke a station license or construction permit. In addition, it would authorize the Federal Communications Commission to suspend a station license for a period of not more than 10 consecutive days for any of the various reasons which may be considered under that agency's authority to revoke a station license or construction permit. Corresponding amendments also would be made to the section of law pertaining to Federal Communications Commission procedure to cover actions taken for suspension as well as actions for revocation.

Again, this proposed amendment deals with matters primarily within the jurisdictional and administrative authority of the Federal Communications Commission. The Federal Trade Commission, therefore, offers no comment other than to note that, to the extent that grounds for revocation or suspension of licenses would include a violation of title 18, United States Code, section 1304 (criminal statute prohibiting the broadcasting of lottery information) and title 18, United States Code, section 1343 (criminal statute prohibiting the use of broadcasting in furtherance of schemes to obtain money or property by means of false or fraudulent pretense), this additional authority would be consistent with, and in aid of, the Federal Trade Commission's efforts against the dissemination of lottery schemes in interstate commerce and false and deceptive advertising and representations when the latter reach the proportion of being fraudulent.

Section 3 of the bill would amend section 317 of the Communications Act of 1934 to require the "person in control" of the broadcasting of any matter, for which payment is made, promised, charged, or accepted by any person, to announce that the matter in question was paid for and disclose the name of the person who has made, promised, or furnished payment. The section would except situations where neither the "person in control" nor any officer or employee of such person had requisite knowledge, if such lack of knowledge was not due to a failure to exercise reasonable diligence. Also excepted would be instances where the "person in control" made an announcement in purported compliance with the law in good faith reliance upon information furnished by the person making or promising the payment, provided the "person in control" had secured a requisite guaranty from the one making payment relating to the payment in question.

Correspondingly, the amendment would require the person making or promising to make the payment for the broadcasting of any matter to inform the "person in control" as to the name and address of the person making or promising payment, the identification of the person to whom payment is made or is to be made, and the nature and amount of value of payment. The person making payment must, upon request of the "person in control," submit a guaranty that all the information given is full and accurate.

The primary effect of this amendment would be to expand the present section 317 coverage of licensees who fail to announce that the broadcasting of matter is paid for to include and place responsibilities upon those who make payment for the broadcasting of such matter. As testified to before the Subcommittee on Legislative Oversight on March 4, 1960, the Federal Trade Commission has been most active in taking steps against those making payments in instances of "payola" or "plugola." As it was then explained, the Commission feels that, within the limits of its appropriations, action against those making such payments, rather than against the numerous recipients of the payments, would be more effective in attacking the practice. The Commission's statement concluded as follows:

"It is apparent that this Commission could spend a substantial portion of its appropriation to clean up, in its entirety, the 'payola' and 'plugola' practices which have come to its attention since your November hearings. For this reason, we subscribe to the recommendation set forth in the subcommittee's interim report, and we favor the enactment of legislation which would provide criminal penalties for practices generally described in this report as 'payola' or 'plugola.'"

Therefore, keeping in mind that the criminal provision of section 501 of the Communications Act would apply in the event of a violation of section 317 of that act, the Commission favors the purposes of the proposed amendment.

While section 317, as proposed to be amended, would apply to those who make payments and persons in control of broadcasting, the amendment does not go so far as to include disk jockeys, announcers, and others who may actually receive the undercover payments. In order to afford a more complete and effective stoppage of the practices in question, the Commission recommends that consideration be given to including the activities of such additional classes of persons in the proposed legislation.

Section 317 would be written in terms of notification to, and the responsibilities of, "the person in control of such [the] broadcasting." This phrase is not defined in the bill and is susceptible of varying constructions. Its use also would require adjudication as to who is "the person in control" of any broadcast which may be involved.

The two enumerated exceptions to subsection (b) of section 317 are stated in the conjunctive. It appears that these two exceptions are intended as alternatives and that the word "or," rather than the word "and," should be used at line 6 of page 11 of the bill.

Section 4 of the bill would add a new section 508 to the Communications Act of 1934, providing criminal penalties for various acts taken to assist in the effectuation of broadcasting or telecasting rigged quiz shows.

In light of the prevalence of such acts and practices, as disclosed during the recent hearings before the Subcommittee on Legislative Oversight, the Commission favors the enactment of specific criminal legislation, in the nature of that proposed. Inasmuch as this is a proposed criminal section to be added to the Communications Act of 1934, the Commission defers comment as to the particular provisions of the section to the Federal Communications Commission and the Department of Justice.

By direction of the Commission :

EARL W. KINTNER, *Chairman.*

N.B.—In view of the hearings scheduled to begin April 12, 1960, this report has not been cleared with the Bureau of the Budget.

EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
Washington, D.C., April 18, 1960.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of February 12, 1960, requesting the views of this office with respect to H.R. 10241, a bill to amend the Communications Act of 1934 by adding thereto a new section to prohibit the broadcasting of material intended to deceive the listening or viewing public.

The Bureau of the Budget favors the purpose of H.R. 10241, but would like to call to the committee's attention the technical criticisms made by the Federal Communications Commission, the Department of Justice, and the Federal Trade Commission.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

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FEDERAL TRADE COMMISSION,  
Washington, April 11, 1960.

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,*  
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of February 12, 1960, inviting comment upon H.R. 10241, 86th Congress, 2d session, a bill to amend the Communications Act of 1934 by adding thereto a new section to prohibit the broadcasting of material intended to deceive the listening or viewing public.

The bill would make it a criminal offense, punishable by fine and imprisonment, for any person to use, or to cause or assist any person to use, the facilities of any station for the broadcasting of any program, or part thereof, with intent to deceive the viewing or listening public; for any person to prepare, or to cause or assist any person to prepare, any material for use in any broadcasting program, or any part thereof, with intent to deceive the viewing or listening public; for two or more persons to conspire to do any such prohibited act or thing, if one or more such persons does any act to effect the object of the conspiracy.

By a separate and express provision advertising is made a part of broadcasting with the proposed amendment.

The proposed new section 330(a) to the Communications Act of 1934 being a statement of proscribed activities which ultimately would have to be investigated by the Federal Communications Commission and prosecuted by the Department of Justice, and therefore would not involve or affect the functions of this Commission, we believe it appropriate to defer to the above-mentioned agencies and make no comment with respect to this subsection. On the other hand, subsection (c) of the proposed section 330 would make advertising matter which is broadcast a part of a program subject to the criminal penalties in this section. This Commission believes that subsection (c) should not be enacted, and the bill should not apply to advertising, for the following reasons.

The Federal Trade Commission, from the date of its creation, has employed its authority against instances of false and deceptive advertising. The passage of the Wheeler-Lea amendment in 1938 gave added impetus to that effort. Today we have a monitoring unit engaged in appraising advertising not only as disseminated by TV and radio, but as disseminated through other media as well. The Commission does not deem it necessary to have general criminal sanctions in order for it to disengage its responsibilities in the field of advertising.

As the committee is aware, under authority of the Wheeler-Lea amendment to the Federal Trade Commission Act, this Commission may refer to the Attorney General for criminal prosecution false advertising of foods, drugs, devices, and cosmetics, regardless of the media used to disseminate the false advertising. Under this proposal any advertising matter which is broadcast is deemed to be a part of a program. Presumably subsection (c) is intended to subject false advertising to criminal sanction. However, it does not directly so state. Except upon the premise that false advertising broadcast over the airways should be treated differently than false advertising in other media, this Commission could



not justify different treatment of false advertising in different communications media. Although we recognize that the Congress could in its discretion determine to follow such course, it did not see fit to do so when considering the Wheeler-Lea amendment.

While the contemplated criminal proceedings would be instituted by the Department of Justice, it is assumed that administration up to the point of such formal action would be the responsibility of the Federal Communications Commission.

Thus, the proposal would establish a dual responsibility for proceeding against deceptive advertising. When foods, drugs, devices, or cosmetics are involved, the same advertising would be subject to criminal action by either or both the Federal Trade Commission and the Federal Communications Commission, through the Department of Justice, when broadcasting is the medium, and by the Federal Trade Commission, through the Department of Justice, when any other medium is used. On the other hand, the Federal Trade Commission could itself undertake an administrative proceeding with respect to the dissemination of such advertising through any medium. Similarly, when products other than foods, drugs, devices, or cosmetics are involved, and the Federal Communications Commission undertook action with respect to false advertising disseminated by radio or television, the Federal Trade Commission would still have to undertake its administrative action in the event the same advertising was disseminated through other media.

We believe, therefore, that the proposal would result in involved and costly duplication of enforcement effort in connection with the same advertising message disseminated through different media.

The proposal would also establish different standards for judging the propriety of advertising where broadcasting is involved, as distinguished from the situation where any other medium is used. It is conceivable that different results might be reached by the Federal Communications Commission and the Federal Trade Commission following the application of their respective authorizing legislation to particular advertising.

This is especially true since the jurisdiction of the Federal Communications Commission would be dependent upon the presence of the element of intent to deceive, whereas this agency's authority to request the undertaking of criminal proceedings is not alone dependent upon the presence of such an intent, and such an intent is not at all an element in this agency's administrative proceedings.

The objective of H.R. 10241 appears to be aimed at correcting the same situation as H.R. 11341. The Commission believes that H.R. 11341 would more adequately meet the objective of the legislation than H.R. 10241.

By direction of the Commission:

EARL W. KINTNER, *Chairman.*

N.B.—In view of hearings scheduled to begin April 12, 1960, this report has not been cleared with the Bureau of the Budget.

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DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., April 15, 1960.*

Hon. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 10241) to amend the Communications Act of 1934 by adding thereto a new section to prohibit the broadcasting of material intended to deceive the listening or viewing public.

The bill would amend the Communications Act of 1934 by making it unlawful for any person to use, or to cause or assist any person to use, the facilities of any station to broadcast any program, or part thereof (including advertising matter), with intent to deceive the listening or viewing public; or for any person to prepare, or to cause or assist any person to prepare, any material for use in a program with intent to deceive the listening or viewing public; or for two or more persons to conspire to do any such prohibited act or thing if one or more of such persons does any act to effect the object of the conspiracy. Violations of the measure would be punishable by a fine of not more than \$5,000 or imprisonment for not more than 2 years, or both.

The bill is designed to prevent such practices as rigged and deceptive television and radio programs, especially quiz shows. In December 1959, the Attorney General surveyed the recent disclosures of such practices in his report to the President on "Deceptive Practices in Broadcasting Media." (See H. Rept. 1258, 86th Cong., pp. 61-90.) In that report the Attorney General concluded that by promulgating additional rules and regulations under their affirmative statutory duty to protect the public interest in broadcasting and advertising, the Federal Communications Commission and the Federal Trade Commission could take effective action against such practices. In submitting the report the Attorney General stated that "it seems premature to recommend any substantial legislative changes until the agencies and the industry have had an adequate opportunity to show the effectiveness of present and recommended action in dealing with the problems under existing authority" (H. Rept. 1258, p. 63).

If, however, the Congress deems it advisable to make the proscribed activities a crime, it is believed that there are certain features of the instant bill which should receive further consideration.

It is believed that the bill is too broad in its coverage and might even operate as a threat to freedom of speech in areas presumably not contemplated by the measure. For example, a political speech containing incorrect facts might, under this bill, be alleged to be a broadcast of matter "with intent to deceive the listening or viewing public." Also, in the field of dramatic expression, there are many instances of legitimate "dramatic license" which may deceive portions of the audience. If false broadcasts are to be dealt with by legislation, it would seem desirable to enact a bill more narrowly drafted to cover the specific abuses recently disclosed.

It is noted that, for the purposes of the measure, advertising matter which is broadcast in connection with a "program" shall be held to be part of such program. However, the term "program" is not defined and it is not clear whether it would include or is intended to include "spot" advertising announcements not a part of a larger entertainment or informational program.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,  
*Deputy Attorney General.*

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
*Washington, D.C., April 18, 1960.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letter of February 12, 1960, requesting the views of this office with respect to H.R. 10242, a bill to amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcasting licensees operate in accordance with the public interest.

The Bureau of the Budget would have no objection to the enactment of legislation for this purpose.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

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U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., April 15, 1960.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill, H.R. 10242, to amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcasting licensees operate in accordance with the public interest.

Section 307 of the Communications Act of 1934 (47 U.S.C. 307) provides that broadcasting licenses shall be granted for no longer than 3 years and renewed for the same period. The bill would amend the section to authorize the Commission, in the alternative, to grant a conditional renewal for not to exceed 1 year on such conditions as the Commission shall deem appropriate. Upon expiration of the conditional license, a renewal of the original license may be granted for a term not to exceed 3 years if the Commission finds that the licensee has met the conditions imposed in the conditional renewal and that the public interest, convenience, and necessity would be served thereby.

Section 312 of the act (47 U.S.C. 312) authorizes the Commission to revoke station licenses on certain specified grounds. The bill would amend section 312 so as to authorize the Commission to suspend, rather than revoke, any station license for a term not to exceed 30 consecutive days for (a) failure to operate according to the terms of the license, (b) violation of provisions of the Communications Act or failure to observe rules or regulations authorized by the act, or (c) violation of cease and desist orders.

In his report to the President on deceptive practices in broadcasting media, December 30, 1959 (see H. Rept. 1258, 86th Cong., pp. 61-90), the Attorney General pointed out that under existing law the Federal Communications Commission has only one express sanction which it may impose upon a broadcaster—revocation of his license. The Attorney General indicated that the drastic nature of this sanction might well explain its infrequent use in the past, and stated that the Commission should be expressly authorized to impose less severe sanctions for actions violating the Communications Act or regulations issued pursuant to it. Such sanctions could include temporary suspension or conditional licenses (H. Rept. 1258, pp. 89-90).

The objectives of the measure appear to be in accord with the Attorney General's recommendations.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,  
*Deputy Attorney General.*

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EXECUTIVE OFFICE OF THE PRESIDENT,  
BUREAU OF THE BUDGET,  
*Washington, D.C., May 3, 1960.*

HON. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

MY DEAR MR. CHAIRMAN: This is in reply to your letters of April 6, 1960, requesting the views of this office with respect to H.R. 11397, a bill to amend the Communications Act of 1934 by adding thereto a new section to prohibit commercial bribery for the purpose of inducing the broadcast performance of musical works, and H.R. 11398, a bill to amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcast licensees, filing renewal applications, continue to operate in accordance with the public interest.

The Bureau of the Budget is in general agreement with the purposes of both bills, but would like to call to the committee's attention the technical objections raised by the Federal Communications Commission, the Department of Justice, and the Federal Trade Commission.

Sincerely yours,

PHILLIP S. HUGHES,  
*Assistant Director for Legislative Reference.*

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
*Washington, D.C., April 15, 1960.*

Hon. OREN HARRIS,  
*Chairman, Committee on Interstate and Foreign Commerce,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill, H.R. 11397, to amend the Communications Act of 1934 by adding thereto a new section to prohibit commercial bribery for the purpose of inducing the broadcast performance of musical works, and the bill, H.R. 11398, to amend the Communications Act of 1934, to strengthen the effectiveness of the Federal Communications Commission in assuring that broadcast licensees, filing renewal applications, continue to operate in accordance with the public interest.

H.R. 11397 would add a new section 508 to the Communications Act of 1934 making it a crime, punishable by imprisonment for not more than 1 year or by a fine of not more than \$1,000, or both, for (1) any station licensee to accept payment in any form as inducement to perform a musical work or recording in which the payer, or person having the payment made, has a pecuniary interest; (2) for any person having such interest to pay or promise to pay a station licensee to induce him to play a musical work on his station; (3) for any station employee to accept money from anyone but his employer in consideration of selecting a musical work for broadcast; and (4) for any person paying or promising to pay a station employee as an inducement for performing or selecting the performance of any musical work. Persons with a pecuniary interest in a musical work are authorized however, to make a bona fide purchase of time on a station to sponsor the musical work.

In his report to the President on deceptive practices in broadcasting media (see H. Rept. 1258, 86th Cong., pp. 61-90), the Attorney General pointed out that present section 317 of the act, coupled with the criminal sanctions of section 501, makes "payola" a criminal offense as to a broadcasting station only, and he recommended the enactment of legislation which would also make "payola" on the part of employees of stations a criminal offense (H. Rept. 1258, p. 90). As the bill would be limited to "payola" as it relates to musical works, the question arises as to whether it is intended as a substitute for more sweeping legislation affecting "payola" in all phases of broadcasting. In his report, the Attorney General did not recommend that any curative legislation be limited to musical compositions. The committee may wish to consider the desirability of including all forms of "payola" and of casting such proposals within the framework of the present section 317.

Section 307 of the Communications Act of 1934 (47 U.S.C. 307) provides that broadcasting licenses shall be granted for no longer than 3 years and renewed for the same period. H.R. 11398 would amend the section to give the Commission additional authority to grant a conditional renewal for not to exceed 1 year upon such conditions as the Commission shall deem appropriate. Upon expiration of the conditional license, a renewal of the original license may be granted for a term not to exceed 3 years if the Commission finds that the licensee has met the conditions imposed in the conditional renewal and that the public interest, convenience, and necessity would be served thereby. Also, the bill would amend section 307 to provide that in passing upon renewal applications, the Commission shall consider violations of the provisions of the new section 508 (relating to "payola"), which would be added to the act by H.R. 11397. The Commission would also be required to consider, in such renewal proceedings, whether the applicant has ratified or consented to conduct by its officers or employees in violation of the new section 508, such consent to be presumed from recurrent violations "over a period of at least 6 months found by the Commission to constitute a pattern or practice."

In his aforementioned report, the Attorney General recommended that conditional renewal authority be expressly conferred on the Commission (H. Rept. 1258, p. 90). H.R. 11398 appears to be in accord with this recommendation of the Attorney General.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LAWRENCE E. WALSH,  
*Deputy Attorney General.*